

IN THE CIRCUIT COURT OF WOOD COUNTY
WEST VIRGINIA

JACK W. LEACH, et al.,

Plaintiffs,

v.

Civil Action
No. 01-C-608
(Judge George W. Hill)

E.I. DU PONT DE NEMOURS AND COMPANY,

Defendant.

The deposition of ANDREW GALLAGHER, taken upon oral examination, pursuant to notice and pursuant to the West Virginia Rules of Civil Procedure, before Jackie Gilmer, Registered Professional Reporter and Notary Public in and for the State of West Virginia, Monday, May 17, 2004, 10:03 a.m., at the offices of Hill, Peterson, Carper, Bee & Deitzler, P.L.L.C., NorthGate Business Park, 500 Tracy Way, Charleston, West Virginia.

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Complainant's
Exhibit No. 122

ANDREW GALLAGHER, WITNESS, SWORN

EXAMINATION

BY MR. HILL:

Q. Would you tell us your name, please?

A. Andrew Gallagher.

Q. And am I correct that at one time you were employed by the West Virginia Department of Environmental Protection?

A. From 1998 to 2002 I was the communications chief of the Department of Environmental Protection.

Q. When did you leave in 1992 -- or, I am sorry -- 2002?

A. My last day would be August of 2002.

Q. Do you want to just briefly tell me about your educational background?

A. I have an undergraduate degree in journalism from West Virginia University. Graduated in 1972. I have a master's degree in humanities from Marshall University Graduate School in 1988. I was a -- chosen as a Fulbright scholar in 1988, although I wasn't able to fulfill the assignment because I just changed -- or '98 because I had just changed my

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job.

THE COURT REPORTER: I'm sorry.

I didn't hear that last part.

A. I was chosen as a Fulbright scholar to go to Pakistan in 1998, but I wasn't able -- to teach over there, but I wasn't able to fulfill that because I had just changed positions.

MR. FENNELL: Can I go back for just a second? I wasn't for sure if you said '98 or '88.

THE WITNESS: '88 when I graduated from graduate school.

MR. FENNELL: And on a Fulbright?

THE WITNESS: Fulbright in '98.

MR. FENNELL: '98.

BY MR. HILL:

Q. And would you tell me about your employment history?

A. I worked for -- when I graduated from college in 1972 I went to work for the Charleston Gazette, and I worked there until January of 1975. I worked then for United Press International for eight years in Charleston, two

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years in Washington. When UPI went belly up in '85, I went to work for the Associated Press, and I worked for the Associated Press from 1985, July of 1985, until I left the AP to go work for DEP, which would be in '98.

Q. And what were your duties while you were --

If I use the term "DEP," is that appropriate for Department of Employment -- Department of Environmental Protection?

A. Yes.

Q. What were your duties there?

A. I was hired as the communications director under Mike Callaghan. Went to work July of 1998. I ran a 10-member office with about a \$700,000 budget. We wrote news releases. I directed the legislative lobbying program. We did public hearings, outreach. Published in -- published and wrote several publications. We wrote all the in-house pamphlets. We did some sort of -- am I going too fast for you all? We did some sort of video programs. I had a television program that I did twice a month about DEP. General

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communications. We had some liaison with congressional people, a lot of liaison with the governor's office, both under Governor Underwood for the last two years and under Governor Wise for the first two years of his administration.

Q. Did you have people under your supervision at DEP?

A. Yes. I had several, four or five public information officers, and then two or three secretaries, a graphic artist, and the videographer.

Q. Were you at DEP when Dee Ann Staats, Dr. Dee Ann Staats, toxicologist, was hired?

A. Yes, I was.

Q. To your knowledge, how did she come to be hired?

A. She was -- I think she applied for the job. I'm not certain, but I believe that she applied for the job. Mike Callaghan, who was the DEP director at the time, knew of her. He made known from talking with Ed Staats, who was her brother who was in the governor's office, and Mike seemed to be very high on Dee Ann's qualifications, and he ended up hiring her.

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Q. Where was her office located at DEP?

A. It was on Hansford Street. DEP had moved -- by the time she was hired DEP's headquarters had moved from Nitro where we were initially to Hansford Street in Charleston, which is in the warehouse district on the back part of Charleston, and she was on the ground floor of that building about catty-corner from where my office was.

Q. Was your office in the same location as her office --

Was your office in the same location all the time that she was located across the hall from you?

MR. FENNELL: Objection.

A. Yes. Dee Ann came after we had moved to Nitro.

Q. Was it across -- I said across the hall. You didn't say that.

Was it across the hall?

A. Yes.

Q. What was the -- what was the distance from your office to hers?

A. 15 feet.

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1 Q. And did her office remain in that
2 location?

3 A. Yes.

4 Q. All the time that she was at --

5 All the time that you were at DEP while
6 she was there, your offices were located next to
7 one another?

8 A. Yes.

9 Q. Or across from one another?

10 A. Yes.

11 Q. Is that correct?

12 A. Yes.

13 Q. What interplay did you have with Dr. Dee
14 Ann Staats at DEP?

15 A. It was the general procedure at DEP that
16 if I wrote a news release it was run past the
17 person who was the expert in that area. That
18 person and I would work together on -- I would
19 usually interview the person. The procedure
20 generally was I would interview the person,
21 write down my understanding of what they had
22 said so that it would be in some form of news
23 form, and then I would run it past them. They
24 would either agree or disagree or make

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1 modifications or changes, and they would send it
2 back to me. And then I would rewrite it, give
3 them a last review, and then usually send it
4 out. They would sign off on it.

5 Q. When it came to the issue of C8 or
6 ammonium perfluorooctanoate -- and just for
7 convenience I'll use the short term of C8, if
8 that's agreeable with you.

9 A. Yes.

10 Q. When it came to the issue of C8 in your
11 office, is that something that you deferred to
12 Dr. Staats about?

13 A. Absolutely.

14 Q. Why is that?

15 A. She was the expert in the field. She
16 was very sensitive about anything that dealt
17 with C8. I was under the impression that that
18 was her primary reason for being there, that she
19 had some sort of expertise about either the
20 chemical composition or how to deal with the
21 situation. She seemed to be -- she was the
22 expert in it.

23 Q. To your knowledge, was the C8 issue in
24 existence when Dee Ann Staats was hired on to

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1 DEP?

2 A. I first learned about C8 through a
3 *Mother Jones article that was sent to me by
4 somebody. It may have been Allyn Turner, who
5 was in charge of the water department, or it may
6 have been somebody entirely outside of the
7 office, and I don't know whether Dee Ann was
8 there at that time or not.

9 Q. To your knowledge, did that Mother Jones
10 article deal with C8 issues from the DuPont
11 Washington Works plant located near Parkersburg,
12 West Virginia?

13 A. Yes, it did.

14 Q. Is that what caught your attention?

15 A. Yes.

16 Q. During the course of your employment at
17 DEP, did you have occasion to prepare press
18 releases concerning C8?

19 A. Yes.

20 Q. Am I correct that as far as the C8 issue
21 involved the DEP, it exclusively involved
22 DuPont?

23 A. Yes.

24 Q. As the user of C8?

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1 A. Yes.

2 Q. To your knowledge, were any other
3 corporate entities involved in the C8 issue from
4 the DEP office?

5 A. No.

6 Q. Were the press releases regarding C8
7 handled any differently than other press
8 releases involving other corporate entities
9 other than DuPont?

10 A. Dee Ann was very sensitive about the
11 news releases. She was -- I would say she was
12 protective about the news releases. I knew that
13 she was engaged in a conversation with officials
14 at DEP with the news releases and I think
15 that -- I believe that some of them were changed
16 to the insistence of her discussions with some
17 of the company officials.

18 Q. By company do you mean DuPont?

19 A. Yes.

20 Q. And you said that Dee Ann Staats was
21 engaged in conversations with DEP officials? Is
22 that what you said?

23 A. Yes.

24 Q. Who were the DEP officials that she was

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engaged in concerning C8?

13

1 MR. FENNELL: Objection. Ed,
2 we were talking about press releases.
3 If you want to talk generally or you
4 want to ask about specific ones.
5 Q. I am speaking generally now, and my
6 question is in response to what I understood to
7 be your response.

8 A. And I would have misspoken. I think I
9 was discussing -- I meant to say DuPont
10 officials, although Dee Ann would have been
11 engaged in discussions with Allyn Turner, who
12 was in charge of the water office, and she would
13 have been engaged in discussions with Callaghan,
14 who was the director of the DEP office, and the
15 legal staff.

16 Q. Are you aware of what DuPont officials
17 Dr. Staats was engaged in concerning the subject
18 of C8?

19 A. She would --

20 MR. FENNELL: Objection.

21 A. She was -- I know she was in contact
22 with Ann Bradley.

23 Q. Ann Bradley, who is a lawyer at Spilman?
24

ANDREW GALLAGHER -- EXAM BY MR. HILL

14

1 A. Right.
2 Q. Spilman & Thomas?
3 A. Yes.
4 Q. How did you come to be aware of that?
5 A. General discussions with Dee Ann.
6 Q. And just for the record, when you refer
7 to Dee Ann, you're talking about Dr. Dee Ann
8 Staats?

9 A. Dr. Staats, yes.
10 Dr. Staats was very sensitive about
11 DuPont's position. She made no bones about
12 that. She was just concerned about what was
13 going to happen.

14 Q. When you say Dr. Staats was sensitive
15 about DuPont's position, are you speaking about
16 the C8 litigation?

17 MR. FENNELL: Objection.

18 A. I don't believe it was the C8 litigation
19 that she was particularly concerned about. She
20 just did not want to upset the company
21 officials. I'm not sure that it was litigation
22 that she was particularly concerned about.

23 Q. Ann Bradley, of course, is a lawyer for
24 DuPont, correct?

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15

1 A. Yes.

2 Q. Are there any other DuPont company
3 officials that you are aware of that she was
4 concerned about?

5 A. No. I believe it was Ann that she dealt
6 with primarily, as far as I was concerned.

7 Q. Were press releases issued from DEP
8 handled differently than -- regarding DuPont's
9 issues as opposed to press releases that dealt
10 with other industry or other corporations?

11 A. I don't recall any of our news releases
12 ever being run by a corporate entity before to
13 get their review and approval of. I know that
14 some of them that dealt with C8, they were run
15 by the company for their approval.

16 Q. Do you know who at the company, who at
17 DuPont reviewed or had input in to DEP press
18 releases before they went out?

19 A. Ann Bradley and I exchanged a few
20 e-mails about them, and I was under the
21 impression, although I can't be sure, that Dee
22 Ann checked in with Ann Bradley concerning some
23 of the news releases.

24 Q. With Dr. Staats' office across the hall

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16

1 from your office, did you overhear her? Let me
2 rephrase that.

3 Did she keep her door open or closed?

4 A. She kept her door closed.

5 Q. Was that standard procedure for her?

6 A. Yes, it was.

7 Q. How about the door to your office?

8 A. My door was always open.

9 Q. Could you hear conversations in
10 Dr. Staats' office with her door closed?

11 A. No.

12 Q. I hand you a document.

13 MR. HILL: I ask this be marked
14 as Exhibit 1.

15 (Deposition Exhibit No. 1
16 marked for identification.)

17 BY MR. HILL:

18 Q. The document which I have handed you is
19 three pages and is identified at the bottom by
20 the numbers EDD0064350. The second page is the
21 same number 351. The third page is the same
22 number 352.

23 I ask you to take a moment and look at
24 this document, which appears to be several

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17

1 e-mails.

2 A. Yes.

3 Q. At the bottom of the first page on
4 what's now been marked as Exhibit 1, correct me
5 if I am wrong, does that appear to be an e-mail
6 from Terry Headley to Dave Watkins on March 7,
7 2002?

8 A. Yes. That is correct.

9 Q. And the e-mail from Terry Headley was
10 sent at 1:21 p.m.; is that correct?

11 A. Yes.

12 Q. What does that appear to be?

13 And let me ask you, who is Terry
14 Headley?

15 A. Terry Headley worked for me. He was in
16 the public information office. He physically
17 worked in my office.

18 Q. And who is Dave Watkins?

19 A. Dave Watkins was another DEP employee
20 who was dealing with monitoring the wells in our
21 Parkersburg area for C8.

22 Q. Is this a news release that was being
23 forwarded?

24 A. Yes, it was.

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18

1 Q. To your knowledge, who prepared that
2 news release?

3 And was it about C8?

4 A. The news release dealt with C8, and it
5 would have been prepared by Headley to begin
6 with and with me giving some input.

7 Q. And Dave Watkins, am I correct,
8 responded there was no attachment to your
9 e-mail, please send again?

10 A. Yes.

11 Q. And the e-mail above that, does it
12 appear that the press release was attached to
13 that e-mail?

14 A. Yes.

15 Q. And the e-mail above that, does it
16 appear that that press release for C8, the draft
17 copy, was then -- had been forwarded to someone
18 at DuPont?

19 A. Yes.

20 Q. Am I correct that Dave Watkins forwarded
21 it to Andrew Hartten at DuPont?

22 A. I would not know that.

23 Q. Is that evident in the middle of that
24 first page? And maybe I'm reading it wrong.

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19

1 Let me ask you to look to the middle of the
2 page.

3 A. It's not clear to me that Dave sent this
4 to him. I just see the little globe there and
5 Dave's name out from it. Someone obviously did
6 that.

7 Q. And the e-mail above that, which is on
8 the same date but later in the day, 4:04 p.m.,
9 does it appear that Andrew Hartten forwarded the
10 proposed C8 release, press release, to Ann
11 Bradley, Bernard J. Reilly, Dawn Jackson at
12 DuPont?

13 A. Yes.

14 Q. With copies going to John Bowman and
15 David Rurak?

16 A. Yes, it does.

17 Q. Then at the top of this page, which
18 would be the latest e-mail in time, is that an
19 e-mail from Dawn Jackson at -- on the same date,
20 March 7, 2002, at 5:41 p.m. to Andrew Hartten
21 with copies to Ann Bradley and others?

22 A. Yes.

23 Q. In the text from -- who is Dawn Jackson?

24 A. Dawn Jackson was the public information

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20

1 person for DuPont at the Washington plant.

2 Q. Did you have dealings with Dawn Jackson?

3 A. Occasionally, yes. We would swap news
4 releases.

5 Q. Read -- if you will, take a moment to
6 yourself and read the text of Dawn Jackson's
7 e-mail message.

8 A. Okay. I've read it.

9 Q. She says, I just spoke with Ann.
10 Who do you take Ann to be?

11 A. Ann Bradley.

12 Q. And Ann Bradley reached Terry Headley
13 and you, Andy Gallagher, in the DEP public
14 information office. She further states, The
15 attached news release has been sent to the
16 media. Ann explained to Andy that releasing
17 this kind of statement without input from
18 Dr. Staats is unacceptable. Stated that we had
19 this problem before with statements containing
20 errors being released without Dr. Staats'
21 approval and asked that Andy Gallagher arrange a
22 meeting with WVDEP Secretary Callaghan. Andy
23 said that the Secretary is out of town but he
24 will set up something with his office when he

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returns.

Let me ask you, do you recall having had this conversation with Ann Bradley?

A. Yes, I do.

Q. Were there errors in the press release for the C8 issue?

A. I didn't believe that there were.

Q. Do you have any recollection as to what Ann Bradley was referring to when she states that the press release contained errors?

MR. FENNELL: Objection to form.

A. No, I don't.

Q. Did you arrange for a meeting with Secretary Callaghan?

A. I withdrew this news release before --

To answer your question, yes, I did arrange a meeting with Secretary Callaghan, although it never took place. I withdrew the news release subsequently because of Ann's complaints. I figured it could be sent out the next day. This did go to the Associated Press, and I remember calling the Associated Press and asking them to hold it, said that I sent it by

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mistake, and they agreed to hold it.

Q. Did you think there were any --

Let me ask you. On the third page of this Exhibit 1, which is identified at the bottom EDD0064352, is this the press release that you issued without running it by Dee Ann Staats for approval?

A. Yes.

Q. And is this the same press release that Ann Bradley spoke to you about?

A. Yes.

Q. What did Ann Bradley complain about regarding this particular press release?

A. I don't remember the details. I just remember Ann saying something to the effect that Dee Ann should have reviewed this before it was sent out and that she was pretty vehement about it.

Q. Why did you send this out without Dee Ann Staats having reviewed it or commenting on it?

MR. FENNELL: Objection.

A. I remember that dealing with Dr. Staats was troublesome in a lot of instances. She

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wanted to vastly rewrite everything, and that in this instance she was not involved in this. I think this was the second or third news release that we had had on C8. She was not named in this, nor was she involved. I did run it past Dave Watkins and Watkins okayed it, and so I went ahead and decided to send it out on my own. I believe that -- now that I see this notation on the bottom of it, that Terry Headley or I would have tried to have contacted Dr. Staats to get her approval, and when we didn't get her approval I just went ahead and sent it out.

Q. Was that --

MR. FENNELL: Objection.

Motion to strike. Go ahead.

Q. Was that your note at the bottom of the page, Note, I called Dr. Staats, no response as yet, 12:45 p.m.?

A. I believe that that was probably Terry's.

Q. Terry Headley?

A. Yes. Terry Headley.

Q. So what steps did you undertake to see

ANDREW GALLAGHER -- EXAM BY MR. HILL

that this press release regarding C8 was not published?

A. I called the Associated Press and asked them not to publish it. As I recall, I was at a baseball game and I called Ann on my cell phone and told her that the news release wasn't going to be going out and that the AP agreed not to send it out.

Q. There's a statement in this press release on the third page of this Exhibit 1, the second paragraph, In addition, concern is growing that the chemical, ammonium perfluorooctanoate, otherwise known as C8, also is being spread by air.

Were you ever told to take that out?

A. Dr. Staats was particularly sensitive to any mention that C8 was being spread by air, and she had every mention of that excised from every news release that I ever recall dealing with. She said that she didn't want that in there.

Q. To your knowledge, was C8 found to be in air emissions from the Washington Works plant?

A. I believe David Watkins told me that it was, and that that was a concern. And I know

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1 that Dee Ann -- or Dr. Staats told me that that
2 was a concern for her, both at this time or when
3 they dealt with that little group that they had
4 down in Cincinnati.

5 Q. Was that the CATT team?

6 A. Yes. The CATT team. Sorry.

7 Q. Further down in that press release that
8 was withdrawn where Armando Benincasa is quoted
9 it said, It's a tricky substance.

10 Was the substance he was referring to,
11 to your knowledge, the C8?

12 A. Yes, it was.

13 Q. It further says, According to Benincasa
14 there are lots of places to look and lots of
15 places to check. And he goes further -- the
16 document further states, Benincasa said the
17 spread of the chemical is all the more troubling
18 because no one really knows the risks. Quote,
19 We really don't know the health risks, end
20 quote, Benincasa said. Quote, That is what one
21 study will determine. The team will come up
22 with a standard. What we think we know is that
23 this chemical is not acutely toxic. By that I
24 mean that people around the plant are not dying

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1 or suffering acute illnesses. I think everyone
2 agrees with that. But what we have to do is try
3 to understand the undercurrent of illnesses if
4 there is one. We want to know what doctors in
5 the area are seeing.

6 My question to you is, was this portion
7 of the press release excised or taken out as
8 well?

9 MR. FENNELL: Objection.

10 A. It was. And that would have come after
11 it had been run past Benincasa for his
12 approval. But he wasn't the one who struck it.
13 He agreed to have the language in there.

14 Q. So in the proposed press release that
15 was ultimately withdrawn Armando Benincasa had
16 approved of these statements attributed to him?

17 A. Yes.

18 Q. Did Dr. Staats want that taken out?

19 A. Dr. Staats --

20 MR. FENNELL: Objection.

21 Q. To your knowledge, did Dr. Staats want
22 that taken out?

23 A. Dr. Staats the next day had the news
24 release rewritten completely.

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 Q. Did you get the sense that Dr. Staats
2 was protecting DuPont regarding the C8 issue?

3 A. Yes.

4 MR. FENNELL: Objection.

5 Q. Why do you say that?

6 MR. FENNELL: Objection.

7 Q. What is the basis of you making that
8 statement that Dr. Staats was -- seemed to be
9 protecting DuPont from the C8 issue?

10 MR. FENNELL: Again,
11 objection.

12 A. When I talked to her about the CATT team
13 in Cincinnati, I asked about the makeup, and I
14 asked her why the citizens weren't involved and
15 why the plaintiffs' people weren't involved in
16 it, and she said they didn't need to be
17 involved, that she had put together an expert
18 team that provided sufficient information.

19 She also was very sensitive and would
20 not let me release any information concerning
21 the air emissions because she said somehow the
22 numbers were wrong and couldn't be corrected.

23 Q. Just for the record, when we refer to
24 CATT team, are we referring to the C8 Assessment

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1 of Toxicology Team?

2 A. Yes. The group that met in Cincinnati.

3 Q. To your knowledge, was Dee Ann Staats in
4 charge of that group, the CATT team?

5 A. As I recall, she told me she chose the
6 people and put it together.

7 Q. Are you aware that she chose an employee
8 of DuPont to be on that team?

9 MR. FENNELL: Objection.

10 A. She told me that, and I was surprised by
11 it.

12 Q. Were you aware that Rob Bilatt, an
13 attorney for the plaintiffs in this lawsuit
14 against DuPont, had made requests that the
15 plaintiffs have a representative on the CATT
16 team?

17 A. No, I was not.

18 Q. How did you come to ask Dr. Staats about
19 having a representative from the people or from
20 the plaintiffs on the CATT team?

21 MR. FENNELL: Objection.

22 A. I was always looking to the sensitive
23 nature of how it might be perceived by the
24 public, how DEP was dealing with the issue, and

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1 I just thought it was a matter of fairness and
2 balance that if we were going to have a company
3 official on we should have somebody representing
4 the public.

5 Q. And am I correct that Dr. Staats did not
6 receive that suggestion very warmly?

7 A. She didn't change her mind about it at
8 all. I didn't have any objection -- not that it
9 was my call, anyway. I didn't have any
10 objection to having a company representative on
11 the team. In fact, I thought that was an
12 intelligent thing to do. I just didn't think
13 that it was intelligent to do that without
14 having somebody on the other side on it as well.

15 MR. HILL: Have this marked as
16 Exhibit 2.

17 (Deposition Exhibit No. 2
18 marked for identification.)

19 BY MR. HILL:

20 Q. Let me show you what's now been marked
21 as Exhibit 2, which is identified in the bottom
22 right-hand corner as EID598200. This has the
23 name of Sue Bonham at the top.

24 Does that appear to be an e-mail?

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1 A. Yes, it does.

2 Q. Do you know who Sue Bonham is?

3 A. No, I do not.

4 Q. Does this appear to be an e-mail from
5 you to Ann Bradley?

6 A. Yes, it does.

7 Q. And the subject is "how 'bout this,"
8 question mark; is that correct?

9 A. Yes.

10 Q. This was sent March 7, 2002, later in
11 the day than the previous e-mails we've
12 discussed occurring at 6:05 p.m., correct?

13 A. Yes.

14 Q. And what was the purpose of this e-mail?
15 Did you remember this e-mail?

16 A. Yes, I did.

17 Q. What was the purpose of it?

18 A. It was the rewritten version of the
19 original that Ann had objected to. This was
20 EDD0064352.

21 Q. Who rewrote that press release?

22 A. I did.

23 Q. And this is a rewrite of the previous
24 press release that you discussed, which is the

29

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 third page of Exhibit 1?

2 A. Yes.

3 Q. And is the title changed?

4 A. Yes, it is.

5 Q. So rather than the first version it
6 says, Water testing area expanded around
7 Parkersburg DuPont plant as concern over
8 airborne spread of chemical grows, the title has
9 changed to, Water testing area expanded around
10 Parkersburg?

11 A. Parkersburg DuPont plant, yes.

12 Q. Parkersburg DuPont plant.

13 Is there -- again, why did you rewrite
14 this?

15 A. To remove the sensitive areas dealing
16 with air and dealing with Benincasa's
17 statements.

18 Q. Is there any reference in Exhibit 2
19 about air emissions of C8?

20 A. No. I don't believe so.

21 Q. Did you completely remove any reference
22 to Armando Benincasa or any quotes from him?

23 A. Yes.

24 Q. At the time am I correct that Armando

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ANDREW GALLAGHER -- EXAM BY MR. HILL

1 Benincasa was a lawyer on staff at West Virginia
2 DEP?

3 A. Yes. And I believe he was advising
4 Dr. Staats on issues dealing with the subject of
5 C8. She placed great confidence in what he had
6 to say.

7 Q. To your knowledge, was this revised
8 version of the press release on C8 submitted for
9 publication?

10 A. Yes.

11 Q. Did Dee Ann Staats pass approval to this
12 revision?

13 A. I don't remember exactly, but I believe
14 that she did.

15 Q. Were the revisions made in this press
16 release, to your knowledge, because of DuPont's
17 input into the contents of the press release?

18 MR. FENNEL: Objection.

19 A. That I don't know. I am not aware of
20 that, except to say that from the complaints
21 that were -- that had occurred, I think it was
22 the day before, complaints had occurred from
23 what Ms. Bradley had said to me.

24 Q. During the entire time that you were at

32

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 DEP, did you experience any other corporate
2 entities having input into DEP press releases?

3 A. Not that I recall.

4 Q. On any other subjects that you as an
5 employee of DEP issued press releases on, were
6 changes made on any other subjects other than
7 C8?

8 MR. FENNELL: Objection.

9 A. We did change some news releases at the
10 time if I gave it to Allyn Turner, who's in
11 charge of water, Stephanie Timmermeyer, who's in
12 charge of air, if they didn't particularly like
13 the phraseology of a certain thing it would be
14 changed, if they wanted to do that. I never had
15 any relationship with anybody on the same level
16 as I did with Dr. Staats about changing things.

17 Q. Do you feel that Dr. Staats' insistence
18 on changing press releases is because of her
19 protective attitude towards DuPont?

20 MR. FENNELL: Objection.

21 A. I don't know. Dr. Staats was very
22 technical in nature. She was very high strung.
23 She was very sensitive about her prerogatives.
24 She was sensitive about the company. I think

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 that all of those elements went in to why she
2 changed news releases.

3 Q. Did she ever express to you a reason
4 that she wanted no mention of air emissions, C8
5 air emissions, in the press releases?

6 MR. FENNELL: Objection.

7 A. She did not want that information to be
8 out to the public.

9 Q. Was there a concern about the amount of
10 C8 in air emissions from the Washington Works
11 DuPont plant?

12 MR. FENNELL: Objection.

13 A. Yes.

14 Q. How was that expressed to you? What
15 made you think that?

16 MR. FENNELL: Objection.

17 A. I remember when the air issue first came
18 up, and it may have been in this news release,
19 Watkins may have mentioned it to me, that I
20 thought that that was such a sensitive nature
21 that I thought that it needed to be gotten out
22 to the public right away, and when I did mention
23 it a couple of times Dee Ann said, absolutely
24 not, we can't mention that and it wasn't going

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 to go into the news release -- the news
2 releases.

3 And she refused -- when I asked her
4 about the information about the CATT team air
5 issues in Cincinnati, she refused to give me any
6 background information on that at all saying the
7 figures were too sensitive.

8 Q. When the CATT team ultimately rendered
9 its findings after the Cincinnati meeting, to
10 your knowledge, did that finding deal with C8
11 levels in drinking water only?

12 A. Yes.

13 MR. FENNELL: Objection.

14 A. As far as I recall, the news release
15 dealt with that.

16 MR. HILL: Three.

17 (Deposition Exhibit No. 3
18 marked for identification.)

19 BY MR. HILL:

20 Q. Let me show you what has been marked as
21 Exhibit 3, which is identified at the bottom of
22 the page, one sheet, EDD0064356.

23 Can you identify what that is?

24 A. Yes. It's an e-mail from Dawn Jackson

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 to Andrew Harten and several other people at
2 DuPont concerning the first DEP news release
3 that we mentioned, the one that was ultimately
4 pulled back.

5 Q. Did that go to Ann Bradley as well?

6 A. Yes.

7 Q. And the subject line on this is, Follow-
8 up on WVDEP press release. Is that correct?

9 A. Yes.

10 Q. And this was sent by Dawn Jackson on
11 March 7, 2002, at 6:11 p.m.?

12 A. Yes.

13 Q. Did you, in fact, receive this e-mail?

14 A. No. I did not receive this e-mail.

15 Q. Would you, to yourself, take a moment
16 and read the contents of the e-mail?

17 A. Yes. I've read it.

18 Q. In the second sentence, Ann had a chance
19 to speak with Dr. Dee Ann Staats, do you take
20 Ann to be Ann Bradley?

21 A. Yes.

22 Q. The science advisor for the state
23 consent order work, and she is furious that the
24 press release was issued without her review.

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 Do you have an understanding who "she"
2 refers to in that portion?

3 A. I believe that's Dr. Staats.

4 Q. And she agrees with the need to speak
5 with Secretary Callaghan.

6 Does that also refer to Dr. Staats?

7 A. Yes.

8 Q. In the next portion of this e-mail it
9 says, Also, Andy Gallagher called Ann back.

10 Is that Ann Bradley?

11 A. Yes.

12 Q. Shortly before 6 p.m. to tell her that
13 he had issued a notice to the AP wire service to
14 pull the story that he had released earlier.
15 If, however, it is too late and I get calls from
16 the media I will say, quote, we understand that
17 the WVDEP has disavowed that statement and it is
18 appropriate that you contact them. In
19 particular, since several of the comments in the
20 press release deal with toxicology you should
21 contact Dr. Dee Ann Staats, who is a
22 toxicologist and is the science advisor for the
23 C8 Assessment of Toxicity Team at that number.

24 Were you aware of Dawn Jackson having

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 made this statement?

2 A. It seems that Dawn and I may have
3 discussed this that evening and she said that
4 that's what she was going to say, and I believe
5 I agreed with her, that I would -- if any calls
6 came to me that I would say that we had
7 withdrawn the thing or that I had sent it out
8 inadvertently.

9 Q. And am I correct that you were
10 successful in pulling that press release?

11 A. Yes.

12 Q. And it was never published?

13 A. No, it was not.

14 (Deposition Exhibit No. 4
15 marked for identification.)

16 BY MR. HILL:

17 Q. Let me show you what has been marked as
18 Exhibit 4, which is a two-page document
19 identified at the bottom by EDD0064423 and
20 EDD0064424. Let me have you look at the bottom
21 of the page.

22 Am I correct that that is an e-mail from
23 you to Ann Bradley on March 7, 2002, at
24 6:05 p.m.?

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1 A. Yes.

2 Q. Is that the same e-mail that's the
3 subject matter, how 'bout this, that was
4 referred to in the earlier exhibit?

5 A. Yes.

6 Q. Let me call your attention to the e-mail
7 above that from Ann Bradley to Dawn Jackson with
8 copies to Bernard J. Reilly, John Bowman, and
9 Heather Jones on March 8, 2002, at 9:46 a.m.

10 Does it appear that that e-mail from you
11 was simply forwarded by Ann Bradley to those
12 individuals?

13 A. Yes.

14 Q. And above that at the top of the page,
15 does that appear to be an e-mail from Ann
16 Bradley, the Spilman, Thomas law firm, on March
17 8, 2002, at 12:53 p.m. to Dawn Jackson --

18 A. Yes.

19 Q. -- and others, copies to Bernard Reilly,
20 John Bowman, Heather Jones?

21 And the statement made in this e-mail
22 under the subject line is, I don't think this
23 one is going out at all?

24 A. Yes.

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 Q. As you read this, what does that refer
2 to, this one?

3 MR. FENNELL: Objection.

4 A. It looks like the news release.

5 Q. Is that -- do you take that to mean the
6 press release regarding C8 that you pulled, that
7 you instructed not to go out?

8 MR. FENNELL: Again,
9 objection.

10 A. That I don't know. If I ...

11 Q. Let me ask you to look back at your
12 Exhibit No. 2, which is your e-mail to Ann
13 Bradley with the same title that we're looking
14 at on the top of Exhibit 4, how 'bout this.

15 And in Exhibit 2, am I correct that that
16 is the version of the press release that was
17 published?

18 MR. FENNELL: Objection. Go
19 ahead.

20 A. Either this one or this one on the
21 second page of Exhibit 4. You can see the
22 similarities between the two of them. One of
23 those two was published. I believe I rewrote
24 this, sent the shorter version to Ann, gave the

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 shorter version to Dee Ann, and then ultimately
2 I believe this version --

3 Q. Compare those for me, the press release
4 that appears on Exhibit 2 with the press release
5 attached to your e-mail at the bottom of the
6 first page on Exhibit 4. I just want to ask you
7 if they are, in fact, the same.

8 A. Well, the Exhibit 4 e-mail seems to be a
9 little bit -- maybe it's just the blown-up
10 version. No. They are the same. Sorry.
11 You're right.

12 Q. Back on Exhibit 4, do you see underneath
13 the e-mail we're talking about where it says, I
14 don't think this one is going out at all,
15 there's an e-mail from Dawn Jackson to Ann
16 Bradley on March 8, 2002, at 12:40 p.m.?

17 A. Yes.

18 Q. With the same subject how 'bout this?

19 A. Yes.

20 Q. And a statement is made, This is
21 certainly an improvement over what was released
22 and retracted last night. I am still concerned
23 about one of the -- I am still confused by one
24 statement.

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 A. Yes.

2 Q. Take a moment and read that statement
3 that Dawn Jackson says she is still confused by.

4 A. Yes.

5 Q. Am I correct that her concern is about
6 the statement in that press release that was
7 published about finding higher concentrations of
8 C8 in public water supplies than in most of the
9 wells?

10 MR. FENNELL: Objection.

11 Q. I am not reading it verbatim. Do you
12 see that?

13 A. Yes, I do. But I'm not sure that -- I'm
14 not sure what her concern was there. I think
15 that she was more concerned about perhaps the
16 location of the wells that were being sampled
17 and how they were being sampled.

18 Q. Well, she makes a statement, What
19 wells? He says that we're finding higher
20 concentration in public water supplies than in
21 most of the wells, but what are the wells that
22 he is talking about? Does he mean the private
23 wells that are being sampled, question mark.

24 And my question to you is, as we sit

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 here today do you know what wells you were
2 referencing in that press release that was
3 published?

4 A. Watkins was saying that there were wells
5 in the area of the DuPont Works that were being
6 sampled, and those were samples taken from
7 private wells in that area.

8 Q. So at the top of Exhibit 4 where Ann
9 Bradley sends an e-mail to Dawn Jackson and
10 others regarding the "how 'bout this" e-mail
11 from you and she said I don't think this one is
12 going out at all, was she incorrect about that
13 e-mail -- was she correct about that press
14 release in that it was actually published as
15 revised?

16 MR. FENNELL: Objection.

17 A. I believe that I was frustrated at this
18 point and said, you know, I'm just going to slim
19 this thing down, take out anything that could
20 possibly be controversial, prepare it and get it
21 okayed.

22 Q. And, in fact, you did trim down that
23 press release and that was okayed by Dee Ann
24 Staats?

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 A. Right.

2 Q. And it was published?

3 A. Right.

4 Q. To your knowledge, did Ann Bradley still
5 object to it?

6 A. No, I don't believe so.

7 (Deposition Exhibit No. 5
8 marked for identification.)

9 BY MR. HILL:

10 Q. I'm handing you what has now been marked
11 as Exhibit 5, which is four pages and is
12 identified at the bottom of the first page with
13 numbers EID598796. The next page is the same
14 number 97, the third page is the same number 98,
15 the fourth page is the same number 99.

16 Let me ask you to take a moment and look
17 this document over.

18 A. Yes. Okay.

19 Q. And on the second page of Exhibit 5 at
20 the bottom, am I correct that that is an e-mail
21 from you to Ann Bradley, subject, C8 proposal,
22 dated May 9, 2002, at 1:47 p.m.?

23 A. Yes.

24 Q. And the title under that is, Health

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 level for C8 announced by expert team; public
2 meeting May 15?
3 A. Yes.
4 Q. And what is the text that follows on the
5 next two pages of this exhibit?
6 A. It appears to be the same release,
7 essentially the same release.
8 Q. How did this press release come about?
9 When you say "same release," what do you
10 mean?
11 A. This was something that Dr. Staats would
12 have notified me about, something that I would
13 have been aware of, that I would have prepared
14 the news release to announce that the health
15 level for C8 was being announced by this expert
16 team.
17 Q. This was the results of the CATT team
18 from the Cincinnati meeting?
19 A. Yes.
20 Q. Why did you send this to Ann Bradley?
21 A. If I did, it would have been at the
22 direction of Dr. Staats.
23 Q. The subject line on this e-mail from you
24 to Ann Bradley is C8 proposal.

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 Does that mean this was a proposed press
2 release?
3 A. Yes.
4 Q. Were you sending it to Ann Bradley for
5 her comments or suggestions before it was
6 released for publication?
7 A. Yes.
8 Q. And in the e-mail above that on page 2
9 of Exhibit 5, is that an e-mail from Ann Bradley
10 back to you?
11 A. Yes.
12 Q. And she has listed, quote, Some
13 suggestions, correct?
14 A. Yes.
15 Q. Did you take this to mean suggested
16 changes for the proposed press release regarding
17 C8?
18 A. Yes.
19 Q. Did you make those changes?
20 A. I believe I did.
21 Q. And on page 1 of Exhibit 5 that you have
22 in front of you towards the top of the page, is
23 that an e-mail from you to Ann Bradley on May 9
24 of 2002 at 3:17 p.m.?

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ANDREW GALLAGHER -- EXAM BY MR. HILL

1 A. Yes.
2 Q. And the subject is here's the release;
3 is that correct?
4 A. Yes.
5 Q. And is that, in fact, a revised press
6 release regarding C8 that you had previously
7 sent to Ann Bradley for review?
8 A. Yes.
9 Q. And the title there seems to have
10 changed slightly in that it leaves off the
11 public meeting May 15 on the earlier version.
12 Am I correct about that?
13 A. Yes.
14 Q. And the title is, Health level for C8
15 announced by expert team?
16 A. Yes.
17 Q. Was this press release, in fact,
18 released for publication?
19 A. Yes, it was.
20 MR. FENNELL: Objection.
21 Q. To your knowledge, was it published?
22 A. Yes.
23 Q. And at the top of page 1 of Exhibit 5 is
24 the name of Lisa L. Balderson, and there's an

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ANDREW GALLAGHER -- EXAM BY MR. HILL

1 e-mail from Ann Bradley, Thursday, May 9, 2002,
2 4:50 p.m., to Lisa Balderson and others which
3 forwards your e-mail; is that correct?
4 A. Yes.
5 Q. Do you know who Lisa Balderson is?
6 A. No.
7 Q. From the e-mail address would you
8 conclude that she's someone within Ann Bradley's
9 law firm?
10 MR. FENNELL: Objection.
11 A. I wouldn't have any idea. I don't know.
12 Q. The reason I ask that is by her name,
13 Lisa L. Balderson, there is no address.
14 A. Not for her, nor Jenny K. Chapman.
15 Q. Correct.
16 Do you recall any other press releases
17 dealing with C8 that you submitted to Ann
18 Bradley or to anyone else representing DuPont or
19 anyone else at DuPont for their approval before
20 press releases went out?
21 MR. FENNELL: Would you read
22 that back for me?
23 (Question read back by court
24 reporter.)

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ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 MR. FENNELL: Objection. Go
2 ahead.
3 A. I don't recall independently. There was
4 a number of exchanges over a number dealing with
5 C8 or the number of levels. That is possible
6 that could have happened.
7 By MR. HILL:
8 Q. To your knowledge, what was the
9 relationship between Dr. Dee Ann Staats and Ann
10 Bradley?
11 MR. FENNELL: Objection.
12 A. They were in communication. Seemed to
13 be very friendly with one another.
14 Q. To your knowledge, did they deal with
15 subjects other than C8?
16 A. I don't know.
17 Q. When I say "they" I mean Dr. Staats and
18 Ann Bradley.
19 A. Yes. And I don't know.
20 Q. Did Dr. Staats ever comment about the
21 Freedom of Information Act request that came
22 from Rob Bilatt to the Department of
23 Environmental Protection regarding C8?
24 A. I don't recall that, but that would have

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 come to my office. That would have been handled
2 by the woman I had in charge of the Freedom of
3 Information Act requests at the time. It might
4 not have come to me.
5 Q. Did Dr. Staats ever express any attitude
6 to you at all towards or about the lawyers
7 representing the plaintiffs in this case against
8 DuPont regarding C8?
9 MR. FENNELL: Objection.
10 A. She was afraid of dealing with the
11 lawyers on the plaintiffs' side.
12 Q. What did she say or do to make you think
13 that?
14 A. She avoided to the last minute having
15 her deposition taken, as I recall. She was very
16 sensitive about those issues.
17 Q. Were you still at DEP when Stephanie
18 Timmermeyer was hired?
19 A. Yes.
20 Q. And are you aware that she is a lawyer
21 that had worked at the Spilman, Thomas law firm?
22 A. Yes, I was.
23 Q. What was, to your knowledge, she hired
24 to do at DEP?

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 MR. FENNELL: Objection. Go
2 ahead.
3 A. She was in charge of the air operations,
4 the Office of Air Quality. There were four main
5 divisions in the DEP, and that was one of them.
6 Q. What were the others?
7 A. Water, waste, and mining.
8 Q. Did the Air Quality Division of DEP deal
9 with C8 emissions into the air from the
10 Washington Works DuPont plant?
11 MR. FENNELL: Objection.
12 A. I don't recall if they did.
13 Q. Were you aware of Stephanie
14 Timmermeyer's involvement in representing DuPont
15 while she was still at the Spilman, Thomas law
16 firm regarding the consent order that was
17 developed between DuPont and DEP?
18 A. I remember getting one telephone call
19 from Stephanie while she was working over there
20 at Spilman. She asked me to change a news
21 release. I don't even remember what the details
22 were. She asked me to change the news release.
23 I told her I would not, and we left it at that.
24 Q. Did that deal, if you recall, with the

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 subject of C8?
2 A. I don't recall.
3 Q. Did Dr. Staats express to you any
4 feelings one way or the other when the CATT team
5 announced its findings of safe levels of C8 in
6 drinking water?
7 MR. FENNELL: Objection.
8 A. She was very pleased with the findings.
9 She thought that they had been scientifically
10 put together and a well qualified team and she
11 was very satisfied with them.
12 Q. Is that something that she stated to
13 you?
14 A. Yes.
15 Q. Do you recall specifically what she said
16 to you?
17 MR. FENNELL: Objection.
18 Q. As specifically as you can recall, can
19 you relate that?
20 A. Dr. Staats thought that she put a lot of
21 work into putting together this team and having
22 them do the scientific work, and once they
23 released their findings she believed that her --
24 she indicated to me that her beliefs had been

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 vindicated, that she never believed that there
2 were damaging pollutants in the water up at
3 DuPont.

4 Q. Just so I understand, Dr. Staats
5 expressed to you that she never felt even before
6 the CATT team rendered its results that levels
7 of C8 in the water were unsafe?

8 MR. FENNELL: Objection.

9 A. She -- I don't want to mischaracterize
10 what she said. I believe that she thought the
11 water up there was safe and that this vindicated
12 her belief that the water up there was safe.

13 Q. To your knowledge, did she express a
14 belief that the C8 levels in the water were safe
15 to humans before the CATT team examined this
16 issue and rendered its findings of safe level of
17 C8 in drinking water?

18 MR. FENNELL: Objection.

19 A. No, I don't know that. I don't recall.

20 Q. Do you recall any discussions while you
21 were at DEP about DuPont provided alternate
22 drinking water for the people in the area where
23 water was contaminated with C8?

24 A. I remember that --

ANDREW GALLAGHER -- EXAM BY MR. HILL

1 MR. FENNELL: Objection.

2 A. I remember something about that, but I
3 don't recall any of the details. And that would
4 have come to me through Dr. Staats, I'm sure.

5 Q. What do you recall about it?

6 A. I don't remember any of the details. I
7 just remember there was a discussion or two
8 about it. Now I couldn't tell you the substance
9 of it.

10 Q. As part of your responsibilities at DEP,
11 were you required to attend public meetings?

12 A. Yes.

13 Q. Did you, in fact, attend public meetings
14 concerning C8?

15 A. Yes.

16 Q. I'm talking about public meetings that
17 the DEP was involved in regarding C8.

18 A. Yes.

19 Q. Where were those?

20 A. Those were at Blennerhassett Middle
21 School outside of Parkersburg. Between
22 Parkersburg and the Washington Works plant.

23 Q. Were there other locations?

24 A. Those -- I think that I recall two

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ANDREW GALLAGHER -- EXAM BY MR. HILL

1 meetings, and they were both held there.

2 Q. What was Dr. Staats' role in those
3 meetings, if you recall?

4 A. Dr. Staats was in charge of the meetings
5 from top to bottom. She wanted them set up by
6 our office, but she wanted to direct the
7 meeting. She wanted to provide the
8 information. She wanted to respond to all
9 questions.

10 Q. What made you believe that?

11 A. She told me.

12 Q. Did Dee Ann Staats respond to inquiries
13 by newspaper reporters, to your knowledge?

14 A. Yes, she did.

15 Q. Do you remember what papers?

16 A. She responded reluctantly but did
17 respond to, I believe, any newspaper that called
18 up and asked her. She was sort of nervous and I
19 think she was uncomfortable with being
20 interviewed by newspaper reporters. She might
21 not have agreed to an interview with Ken Ward of
22 the Charleston Gazette, but I believe generally
23 she eventually came around and gave the
24 interviews.

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ANDREW GALLAGHER -- EXAM BY MR. HILL

1 Q. Did she express to you any feelings she
2 had about the Gazette or its reporter Ken Ward?

3 A. Well, everybody at DEP generally felt
4 that the Gazette was hostile towards anything
5 that we were trying to do at the time, and Ken
6 Ward was particularly knowledgeable and
7 particularly obnoxious, and I don't think
8 anybody ever particularly wanted to talk to him.

9 Q. About all subjects or about any
10 particular subjects?

11 A. Well, particularly about coal mining and
12 water issues. No one wanted to talk to Ken
13 about those issues. I suppose air as well.
14 Probably the only thing that we wanted to talk
15 to him about was waste. I talked to him on a
16 regular basis obviously, but seldom won any
17 battles with him.

18 But I know Dee Ann was concerned that he
19 was going to ask her about her relationship,
20 being hired because of her brother, and she had
21 expressed that to me. Because her brother was
22 in the governor's office.

23 Q. Did Dr. Staats take issue or object to
24 or disagree, to your knowledge, with anything

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ANDREW GALLAGHER -- EXAM BY MR. HILL

Ken Ward wrote in articles in the Gazette concerning C8?

MR. FENNELL: Objection.

A. I don't recall any specific objections.

Q. Do you have any knowledge regarding why

Dr. Staats left DEP?

A. No, I don't.

Q. Do you know when she left DEP?

A. I believe she left sometime after I did, although I'm not sure, which would be after August of 2002.

Q. Do you have any idea what she is doing now?

A. No, I don't.

Q. Has she ever expressed to you her role as an expert witness in environmental matters?

A. Yes. She was quite proud of the fact that she had testified in several instances across the country as an expert witness, and I believe when I saw her resume that that was listed on the resume.

Q. Do you know if that involved environmental matters?

A. Yes.

ANDREW GALLAGHER -- EXAM BY MR. HILL

Q. Do you know if her involvement was exclusively for industry as opposed to environmental concerns?

A. Yes.

MR. FENNELL: Objection.

A. Yes. She was an industry expert.

Q. Do you know who took your place at DEP?

A. Yes. Jessica. I forget what her last name is.

Q. To your knowledge --

A. Jessica Welch. I am sorry.

Q. Is she still there?

A. Yes.

Q. Are you aware of DEP putting out releases about C8 after your departure?

A. No.

MR. FENNELL: Objection.

A. I pay no more attention to it.

Q. So there may have been, but you're unaware of it?

A. Yes.

Q. How did you come to leave the Department of Environmental Protection?

A. I had given an interview to the

ANDREW GALLAGHER -- EXAM BY MR. HILL

newspaper Graffiti in which I said some derogatory things about Massey Coal Company. Governor Wise took exception to that. He accepted my resignation. I had given a blanket resignation any time you have a new director in there, undated, and he accepted my resignation and I left.

Q. What have you done since then?

A. I've worked for -- I've been a lobbyist and I've worked for a public relations agency in Charleston. I worked for a consulting group with the federal government for four months last year in Morgantown.

Q. Either during your employment at DEP or afterwards and up to and including today, have you had any particular interest in this litigation that we're involved in involving citizens, residents in the Parkersburg area against DuPont regarding C8?

MR. FENNELL: Objection.

A. No.

Q. You don't have any interest in seeing the results of this litigation go one way or the other?

ANDREW GALLAGHER -- EXAM BY MR. HILL

A. No. I had no interest in it at the time, except to get news releases out.

Q. Were press releases while you were at DEP regarding DuPont and C8 handled differently than press releases about other subjects involving other corporations?

MR. FENNELL: Objection.

A. I don't recall any period of time where a corporate entity asked to change news releases. That may have gone on behind closed doors that I didn't know about.

Q. Do you recall any other instances where corporations were provided press releases to look at before they were actually released in order to have some input?

A. No. Not that I recall.

Q. To your knowledge, were any press releases regarding C8 ever shown to lawyers representing the plaintiffs in this case before they were sent out?

A. No.

MR. FENNELL: Objection.

MR. HILL: The basis for the objection?

ANDREW GALLAGHER -- EXAM BY MR. HILL

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1 MR. FENNELL: Ed, he was there
2 for only a period of time.
3 BY MR. HILL:
4 Q. At any time that you were at DEP, are
5 you aware of any press releases regarding C8
6 having been run by or shown to plaintiffs'
7 lawyers in this case against DuPont in order to
8 have input or to see them before they were
9 actually released for publication?

10 A. No. They were not.

11 MR. HILL: That's all the
12 questions I have.

13 MR. FENNELL: Why don't we take
14 a break.

15 (Break.)

16 EXAMINATION

17 BY MR. FENNELL:

18 Q. Mr. Gallagher, I introduced myself
19 informally. Formally I am Steve Fennell. I'm
20 with the law firm of Steptoe & Johnson in
21 Washington, D.C., and I represent DuPont, and I
22 would just like to ask you some follow-up
23 questions.

24 And one of the first questions I want to

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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1 ask you is that during the time you were at DEP,
2 you mentioned the procedure for issuing press
3 releases, and I want to make sure I have it
4 right.

5 As I understood the procedure, and I
6 squabbled some notes, so I may be short on it,
7 but this would have been a procedure you not
8 only followed personally but everybody in your
9 office, the process of issuing press releases;
10 is that fair?

11 A. Yes.

12 Q. And the procedure you described, the
13 first step was to interview the substantive
14 person involved, by substantive I mean the
15 person with the substantive expertise within the
16 agency?

17 A. Correct.

18 Q. The second procedure was to write down
19 what that person said, but in a news release
20 format?

21 A. Yes.

22 Q. Is that true?

23 The third procedure was to take that
24 written-down version of what they said and run

ANDREW GALLAGHER -- EXAM BY MR. FENNELL
it by them?

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2 A. Correct.

3 Q. The next procedure was to have them,
4 after they looked at it, send it back to the
5 people who worked with you in public affairs; is
6 that fair?

7 A. Correct.

8 Q. And then whatever changes needed to be
9 made, the next step in the procedure was for
10 your office to rewrite the press release in
11 light of that substantive person's comments?

12 A. Correct.

13 Q. And then the final step was a last
14 review by the substantive person to sign off on
15 the press release before it was sent?

16 A. Yes.

17 Q. And those would have been the procedures
18 that you followed every time you issued a press
19 release in which Dee Ann Staats was the
20 substantive person?

21 A. Yes.

22 Q. And let me just go back and ask this
23 question and make sure I'm clear.

24 When we look at the press release that

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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1 you were talking about with Mr. Hill that first
2 began as Gallagher Exhibit 1, this obviously is
3 the draft release?

4 A. Correct.

5 Q. And we're looking at the third page of
6 that exhibit?

7 A. Yes.

8 Q. And it has a note on the bottom, I
9 called Dr. Staats, no response as yet,
10 12:45 p.m.

11 Now, under the standard procedure when
12 you were dealing with issues related to the
13 DuPont Washington Works facility and the subject
14 of C8, during the time you were there was Dee
15 Ann Staats, under these procedures, someone that
16 you had to run these releases by before you
17 issued them?

18 A. Yes.

19 Q. And under the standard procedure with
20 regard to the third page of Gallagher Exhibit
21 No. 1, prior to this time it was released to the
22 Associated Press, did the standard procedure
23 require you to have Dr. Staats' input?

24 A. In this particular instance I thought

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 that David Watkins' input would be sufficient,
2 and Armando, since those were the two people
3 that were involved. But I wanted to run it past
4 Dr. Staats as well.
5 Q. And did Dr. Staats later indicate to you
6 that she had a different point of view, that
7 this should have been run by her and you should
8 have waited for her input?
9 A. Yes.
10 Q. And did you disagree with that at that
11 time?
12 A. I disagreed, but I complied.
13 Q. It was her view of what the procedures
14 were?
15 A. Yes.
16 Q. And did you view that as a legitimate
17 difference of opinion that two professionals
18 could have about compliance with the standard
19 procedure?
20 A. Yes.
21 Q. Now, let me step back because Exhibit 1
22 is the e-mail that's roughly March of 2002, and
23 you've already indicated in your testimony you
24 were aware that prior to that time West Virginia

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 DEP had entered into a consent agreement or
2 consent order with DuPont about the Washington
3 Works plant and the subject of C8; is that fair?
4 A. Yes.
5 Q. And do you recall that that consent
6 order was entered into in roughly November of
7 2001?
8 A. Yes.
9 Q. And in that consent order did the DEP
10 and DuPont agree that DEP would determine a
11 health protection level for C8 in the area of
12 the Washington Works plant?
13 A. Yes.
14 Q. And did they agree that that health
15 protection level for C8 would apply to water?
16 A. Yes.
17 Q. Did they also agree that it would apply
18 to air?
19 A. I don't recall that.
20 Q. You don't recall that. Okay.
21 And did that consent order require
22 DuPont to, in essence, engage in a joint venture
23 with DEP to do an investigation of both the
24 water-based emissions and the air-based

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 emissions in and around the Washington Works
2 plant?
3 A. Yes.
4 Q. Of C8?
5 A. Yes, it did.
6 Q. And so you have two things in this
7 consent order, one, DuPont is an active
8 participant in the investigation, and, two, West
9 Virginia is setting a health protection
10 screening level that applies only to that plant
11 and the area around it?
12 A. Correct.
13 Q. Are we in agreement?
14 A. Correct.
15 Q. Are you aware of any situation during
16 the time you were with DEP where that was done
17 involving any other corporate entity, those two
18 things?
19 A. Air and water?
20 Q. No. The act of cooperation of the
21 company in the actual investigation, such that
22 the company was doing the investigation of the
23 wells, the investigation of the air emissions,
24 and that the DEP was setting a health protection

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 screening level solely for that plant?
2 A. No.
3 Q. That's the only time you've ever seen
4 that?
5 A. Correct.
6 Q. So when you were testifying in response
7 to Mr. Hill's questions, did you ever see
8 another corporate entity who became involved in
9 reviewing press releases from the DEP before
10 they went out, can you identify there any
11 corporate entity that stood in a similar
12 position to DuPont as we just described on those
13 two points?
14 A. No.
15 Q. Now, during the time you were at DEP,
16 were you aware that Dave Watkins and Andrew
17 Hartten had to work very closely out in the
18 field to investigate the various private and
19 public water wells in the area of the Washington
20 Works plant to comply with the specific
21 requirements of the November 2001 consent order?
22 A. I didn't know Mr. Hartten, but I know
23 that David Watkins, he did, yes.
24 Q. And if we look at the third page of

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 Gallagher Exhibit No. 1, if you look at the last
2 paragraph, could you read that out loud?
3 A. They have been about as cooperative as
4 one can get, Watkins said. They have done
5 everything we have asked them to do and not
6 objected. Quite honestly, some of the things I
7 have asked them to do have been over and above
8 the requirements of the consent order.
9 Q. And "they" in that quote refers to
10 DuPont?
11 A. Correct.
12 Q. And in drafting this press release, did
13 you obtain that quote from Mr. Watkins?
14 A. Yes, I did.
15 Q. And were you satisfied in putting that
16 quote in the press release that it was an
17 accurate --
18 A. Absolutely.
19 Q. -- quote?
20 Now, Mr. Benincasa, Armando Benincasa,
21 not that I think this is that relevant, but
22 there has been some reference to individuals
23 within the DEP who might have some point in
24 their career had a connection with a law firm

ANDREW GALLAGHER -- EXAM BY MR. FENNELL
that worked for DuPont.

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- 1 Do you remember that testimony that
2 Mr. Hill was trying to elicit?
3 Were you aware that during this period
4 of time that Mr. Benincasa's wife worked for
5 Mr. Hill's law firm?
6 A. No, I wasn't.
7 Q. Would that trouble you any more than
8 Stephanie, is it Timmermeyer, had had employment
9 or some connection to a law firm?
10 A. No. A lot of the lawyers at DEP have a
11 corporate background. It was not an unusual
12 event.
13 Q. Now, in terms of the pre-review that
14 Mr. Hill was questioning you about --
15 And, again, we're in agreement that
16 there were two factors in that consent order
17 that set DuPont apart from other corporate
18 entities; is that right?
19 A. Yes.
20 Q. In that pre-review, when you look at Ann
21 Bradley -- let's take an example of Gallagher
22 Exhibit No. 5.
23 Do you see that?
24

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 A. Yes.
2 Q. And if you look at, starting on the
3 bottom of the second page on to the third and
4 fourth page there is a draft press release with
5 an e-mail from you dated May 9, 2002,
6 1:47 p.m.?
7 A. Yes.
8 Q. Now, Ann Bradley is an attorney at
9 Spilman, Thomas & Battle here in Charleston;
10 isn't that right?
11 A. Yes.
12 Q. And she was at the time an outside legal
13 counsel for DuPont?
14 A. Yes.
15 Q. And you have indicated in your testimony
16 in response to Mr. Hill's questions that to the
17 best of your knowledge she was the individual
18 that Dr. Staats principally talked to about the
19 C8 issues and the consent order issues; is that
20 correct?
21 A. Yes.
22 Q. And to the best of your knowledge, other
23 than a few times that you said that you and Dawn
24 Jackson may have swapped some press releases,

ANDREW GALLAGHER -- EXAM BY MR. FENNELL
you're not aware of any other official from

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- 1 DuPont who had contacts with Dr. Staats about
2 the consent order and C8 issues?
3 A. No, I'm not.
4 Q. Now, if you look at the second page of
5 Gallagher Exhibit No. 5, Mr. Hill didn't ask you
6 to actually discuss or read the suggestions that
7 Ann Bradley gave you after you sent her the
8 draft press release for pre-review?
9 A. Correct.
10 Q. And if you look at it, she gives you
11 back an e-mail on 5/9/02 at 2:49 p.m., and she
12 says, Some suggestions. Line one,
13 perfluorooctanoate.
14 Do you take that as a suggestion that
15 the word wasn't spelled correctly?
16 A. Correct.
17 Q. Were you glad to have that suggestion?
18 A. Yes.
19 Q. Line 3, same and fluoropolymer-related.
20 Again, a suggestion that the word wasn't
21 spelled correctly?
22 A. Correct.
23 Q. Were you also glad to get that
24

ANDREW GALLAGHER -- EXAM BY MR. FENNELL 73

1 suggestion?

2 A. Yes.

3 Q. Last one is fifth line from end, change

4 "remediate" to "reduce exposure levels"

5 consistent with language of order in Section

6 XI.1.a.

7 Was that a suggestion that you thought

8 was helpful?

9 A. Yes.

10 Q. And were you glad to receive that

11 suggestion?

12 A. Yes.

13 Q. And my understanding of your prior

14 testimony, you don't recall any other suggestion

15 Ann Bradley made about that particular press

16 release; is that right?

17 A. That's correct.

18 Q. Now, let's go back to Gallagher Exhibit

19 No. 1.

20 Now, this is the press release that we

21 talked about that you indicated that you sent on

22 or about -- on March 7, 2002, to the Associated

23 Press, and then you had to ask them to hold it

24 because it had been sent in error?

ANDREW GALLAGHER -- EXAM BY MR. FENNELL 74

1 A. Correct.

2 Q. Do you recall that?

3 A. Yes.

4 Q. Now, is my memory of your testimony

5 accurate in response to Mr. Hill's questions,

6 you indicated that if there's a reference by Ann

7 Bradley that there was an error in that press

8 release, which is the third page of Gallagher

9 Exhibit No. 1, you don't recall what the error

10 was that Ann Bradley was referring to?

11 A. That was correct.

12 Q. And so to the best of your recollection,

13 as you sit here, you don't recall it generally

14 and you also don't recall a specific

15 conversation that you had with Ann Bradley where

16 she told you any suggestion she had about the

17 press release; is that fair?

18 A. No. I remember a specific conversation

19 I had with Ann, and she did say something, but I

20 do not recall what it was.

21 Q. As you sit here today, that's the best

22 your memory will allow you to testify to; is

23 that correct?

24 A. Correct.

ANDREW GALLAGHER -- EXAM BY MR. FENNELL 75

1 Q. Now, other than Gallagher Exhibit No. 5

2 and Gallagher Exhibit No. 1, which are two

3 different press releases, one in May 2002 and

4 one in March 2002, do you have a recollection of

5 any other situation in which Ann Bradley and you

6 talked about changes to a draft press release

7 about C8 and DuPont?

8 A. I can't recall anything specifically.

9 Ann and I talked on a couple of occasions.

10 Q. So it's fair to say that what you can

11 recall, as refreshed by these documents, is if

12 you look at Gallagher Exhibit No. 5, that you

13 were kind enough to send a press release to Ann

14 Bradley for pre-review and she gave you three

15 very minor editorial changes that you were glad

16 to get; is that fair?

17 A. Yes.

18 Q. And that with regard to Gallagher

19 Exhibit No. 1, you recall you had a conversation

20 with Ann Bradley about the release, which is the

21 third page of that exhibit, but you don't recall

22 any of the details of that conversation; is that

23 fair?

24 A. Yes.

ANDREW GALLAGHER -- EXAM BY MR. FENNELL 76

1 Q. And other than that you don't have any

2 testimony you can give us today about

3 interactions or communications you had with Ann

4 Bradley about her comments on press releases

5 issued by DEP concerning DuPont and the subject

6 of C8; is that fair?

7 A. That's fair.

8 Q. Now, if I can clear up one thing just by

9 adding an exhibit.

10 MR. FENNELL: And, Ed, I am

11 sorry. I only have one copy, but we can

12 mark this as Exhibit 6.

13 (Deposition Exhibit No. 6

14 marked for identification.)

15 BY MR. FENNELL:

16 Q. Let me show you what's been marked as

17 Gallagher Exhibit No. 6, and we can compare that

18 to Gallagher Exhibit No. 5.

19 My point on this is a very small one.

20 No need to read the whole release, unless you

21 want to.

22 But when Mr. Hill was questioning you,

23 and it was fair for him to assume this based

24 upon the sequencing of Gallagher Exhibit No. 5,

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

- 1 he noted that the reference in the title to
- 2 public meeting May 15 had been deleted in the
- 3 last of the e-mail chain on Exhibit No. 5.
- 4 Looking at Exhibit No. 6, can you
- 5 identify that as the official DEP press release
- 6 that went out by DEP that is connected to the
- 7 releases that are here in Gallagher Exhibit No.
- 8 5?
- 9 A. Yes. That would be correct.
- 10 Q. So that official release did have in the
- 11 title not only the health levels for C8
- 12 announced by expert team but public meeting May
- 13 15?
- 14 A. Yes.
- 15 Q. So there was no change there?
- 16 A. No.
- 17 Q. Now, let me ask you. We've already gone
- 18 through the changes that occurred because of
- 19 communications you had with Ann Bradley, if you
- 20 can recall or can be refreshed by looking at the
- 21 documents we have in front of you.
- 22 Now, with Dr. Staats, let's turn to
- 23 Dr. Staats just a second.
- 24 You indicated to us that she was very

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

- 1 hands-on in her review of press releases about
- 2 the C8 issue; is that fair?
- 3 A. Yes.
- 4 Q. Now, you also indicated that she was
- 5 sensitive about air emissions in that aspect of
- 6 C8; is that fair?
- 7 A. Yes.
- 8 Q. We've already agreed that one of the
- 9 things that DuPont has to do under the consent
- 10 order, which was a public document, was to deal
- 11 with not only the water-based emissions but also
- 12 the air-based emissions; is that fair?
- 13 A. Yes.
- 14 Q. Were you aware that the CATT team that
- 15 you discussed with Mr. Hill was setting human
- 16 health protective screening levels not only for
- 17 water-based C8 but also for air-based C8?
- 18 A. Yes.
- 19 Q. So when it comes to Dr. Staats'
- 20 sensitivity about the C8 air emissions, is it
- 21 fair to say that the process had already
- 22 contemplated that there was going to be a
- 23 standard set on those air emissions?
- 24 A. Correct.

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ANDREW GALLAGHER -- EXAM BY MR. FENNELL

- 1 Q. And were you aware that eventually the
- 2 CATT team did publish an air emissions standard
- 3 for C8? I believe it was right around the time
- 4 you were leaving.
- 5 A. I believe I subsequently came to know
- 6 that.
- 7 Q. So in terms of Dr. Staats' sensitivity,
- 8 is it fair to say that she may have been
- 9 sensitive about the issue, but certainly she was
- 10 not ignoring the fact --
- 11 MR. HILL: Objection.
- 12 Q. -- that air-based C8 emissions were to
- 13 be analyzed under the consent order?
- 14 MR. HILL: Objection.
- 15 A. No. I don't believe that she was
- 16 ignoring that at all.
- 17 Q. In fact, the CATT team was looking at
- 18 that very carefully; is that fair?
- 19 A. I believe so, yes.
- 20 Q. Now, you gave testimony where you asked
- 21 her about the CATT team and she made some
- 22 reference to you about that -- but let me just
- 23 check my notes -- that the CATT team air
- 24 standard was too sensitive to put in to the

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ANDREW GALLAGHER -- EXAM BY MR. FENNELL

- 1 press release?
- 2 A. Yes.
- 3 Q. Do you have any recollection of anything
- 4 else she said that would more fully explain that
- 5 statement?
- 6 A. She said something to the effect that
- 7 the numbers were not satisfactory and that
- 8 something had to be done to massage the numbers
- 9 or get them to a lower level or a higher level,
- 10 whichever.
- 11 Q. Were you aware that there was actually a
- 12 study that had been done and that the CATT team
- 13 had asked someone to go back and look at the
- 14 details of that study a little bit more so that
- 15 they could be more informed in setting the air
- 16 standard and that that was the reason why they
- 17 did not announce the air standard at the same
- 18 time they announced the water standard
- 19 procedure? Were you aware of that?
- 20 A. I believe I was aware that she wanted to
- 21 look at some other figures, Dr. Staats.
- 22 Q. And would that trouble you that a
- 23 scientist would want to do further investigation
- 24 of the scientific literature?

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ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 A. No.
- 2 Q. Now, when you issued Gallagher Exhibit
- 3 No. 6, did you satisfy yourself that everything
- 4 in there was true, accurate, and complete to the
- 5 best of your ability to determine?
- 6 A. Yes.
- 7 Q. Now, let's go back to Gallagher Exhibit
- 8 No. 1. You have told us that some of quotes for
- 9 Armando Benincasa were withdrawn as you got to
- 10 the revised release.
- 11 You indicate that you had an office near
- 12 Dr. Staats but she kept her door closed all the
- 13 time. Do you recall that testimony?
- 14 A. Correct.
- 15 Q. To the extent a judgment was made that
- 16 certain statements should not be in a release,
- 17 were you aware of everything that Dr. Staats was
- 18 aware of at that time about C8 and the progress
- 19 that DEP and DuPont --
- 20 MR. HILL: Objection.
- 21 Q. -- were making under the November 2001
- 22 consent order?
- 23 A. No. Of course not.
- 24 Q. And, in fact, your role at the time, as

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 you described it yourself -- and I don't mean to
- 2 diminish the role -- but just to say it
- 3 accurately, was a very narrow public information
- 4 role?
- 5 A. Absolutely.
- 6 Q. So you needed just the information that
- 7 was relevant to whatever event needed to be
- 8 announced to the media; is that fair?
- 9 A. Yes.
- 10 Q. And is it fair you have -- as you said,
- 11 you have no great general interest in the
- 12 subject matter of C8?
- 13 A. None at all.
- 14 Q. And is it fair to say that during the
- 15 time you were working on C8 that you didn't go
- 16 out of your way to begin to learn other
- 17 interesting facts, either about the science of
- 18 C8 or the investigations that were occurring
- 19 near the Washington Works plant; is that fair?
- 20 A. That's accurate.
- 21 Q. So that to the extent that anyone else
- 22 who was more involved in the issue of C8 at that
- 23 time made judgment calls about what should or
- 24 shouldn't go into the press releases, you

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 weren't on par in terms of knowledge and
- 2 information to question that; is that fair?
- 3 A. That's correct.
- 4 Q. Now, you had a view that it was okay for
- 5 Dr. Staats to have a representative at DuPont
- 6 involved on the CATT team?
- 7 A. Absolutely.
- 8 Q. Now, did you know who that was?
- 9 A. No.
- 10 Q. Did you know that that individual was
- 11 not just a corporate representative but knew a
- 12 tremendous amount about the science of this
- 13 particular substance of C8?
- 14 A. No.
- 15 Q. Now, you did raise a concern of should
- 16 somebody representing the plaintiffs' lawyers --
- 17 or I take it you thought one of the plaintiffs'
- 18 lawyers should be on the CATT team?
- 19 A. Not one of the plaintiff's lawyers
- 20 necessarily, but somebody representing the
- 21 public up there.
- 22 Q. Now, at the time when this issue arose,
- 23 is it fair to say that the West Virginia
- 24 Department of Environmental Protection, the DEP,

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 is charged with representing the public?
- 2 A. Yes.
- 3 Q. And did the DEP have someone on the CATT
- 4 team?
- 5 A. It was my understanding that Dee Ann --
- 6 or sorry -- Dr. Staats was our representative.
- 7 Q. And she was someone with a substantive
- 8 scientific background in toxicology that she
- 9 could bring to bear as an expert on the
- 10 proceedings of the CATT team; is that fair?
- 11 A. Yes.
- 12 Q. Were you also aware -- let me ask this.
- 13 The United States Environmental
- 14 Protection Agency, is that a governmental
- 15 organization that's also charged with protecting
- 16 the public?
- 17 A. Yes.
- 18 Q. Were you aware that that organization
- 19 was represented on the CATT team?
- 20 A. Yes.
- 21 Q. And were you aware that there was a
- 22 group that has the acronym TERA, T-e-r-a, that
- 23 also worked with the CATT team?
- 24 A. Yes.

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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1 Q. Were you aware of what TERA's background
2 was?

3 A. Yes.

4 Q. Tell us what you were aware of.

5 A. It's my understanding that they had
6 expertise in a number of fields where they could
7 sufficiently represent people.

8 Q. And were you aware that they had a
9 practice of hiring former EPA employees who were
10 very familiar with the way in which EPA analyzed
11 setting human health protection screen levels?

12 A. I may have been aware of that.

13 Q. Now, in terms of your concern that the
14 public be represented on the CATT team, is it
15 fair to say that the DEP having a representative
16 and EPA having a representative on the CATT team
17 did serve as a representation of the public on
18 that CATT team?

19 A. Can I answer that in a little broader
20 aspect? My concern was that the team look
21 balanced because of the potential public
22 relations embarrassment. I believe that if we
23 were going to have a company representative that
24 we needed a representative for the citizens

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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1 apart from the experts.

2 Q. And is it fair to say that what DEP was
3 trying to do through the CATT team was to
4 fulfill its regulatory function?

5 A. Absolutely.

6 Q. And is it also fair to say that DEP did
7 not form the CATT team to try to assist in
8 resolving a litigation over the issue of C8?

9 A. Correct.

10 Q. So that to the extent that plaintiffs'
11 lawyers involved in that litigation are going to
12 have somebody involved in the CATT team, would
13 it be fair to say that in your view that wasn't
14 necessary as long as you felt there was a
15 balance in the representation provided?

16 A. Yes. I didn't particularly care whether
17 the plaintiffs' lawyers were on there or not.

18 Q. And were you aware that Dr. Staats --
19 even with your last answer, are you aware that
20 Dr. Staats actually agreed to meet with a
21 scientist who was working with Mr. Bilatt, one
22 of the plaintiffs' lawyers?

23 A. I was not. And it was my impression
24 that Dr. Staats did not like dealing with the

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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1 plaintiffs' lawyers at all.

2 Q. Well, I would think with Mr. Hill that
3 would probably have been an exception, but do
4 you recall whether or not it was Rob Bilatt that
5 she dealt with or Mr. Hill?

6 A. I think it was Mr. Bilatt.

7 Q. So when you say plaintiff's lawyers,
8 would it be fair to say that the relationship
9 was with just one plaintiffs' lawyer?

10 A. Yes.

11 Q. And that, therefore, her concern about
12 dealings with plaintiffs' lawyers, fairly put,
13 would be she was concerned about dealing with
14 Mr. Bilatt?

15 A. Yes.

16 Q. Now, are you aware that she also offered
17 to Mr. Bilatt, if I recall this correctly, to be
18 an observer of the CATT team?

19 A. I don't recall that.

20 Q. Or to have somebody --

21 MR. HILL: Objection.

22 Q. -- a scientist be there on his behalf as
23 an observer?

24 MR. HILL: Objection.

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1 A. No. I don't recall her ever saying
2 that.

3 Q. And from your point of view, is that
4 something that you think, as much as Mr. Watkins
5 has said in that quote we have from Exhibit 1,
6 that Dr. Staats in doing that was going beyond
7 what she was required to do under the consent
8 order?

9 A. Yes. I assume so.

10 Q. Let me ask this one question because I
11 wasn't sure in terms of background.

12 After you left DEP you said you did some
13 lobbying and you went up to Morgantown for a
14 while.

15 Q. Did you do lobbying here in Charleston?

16 A. Yes. For the West Virginia Nurses
17 Association.

18 Q. And what was the subject?

19 A. Healthcare, nursing, subjects of things
20 like that.

21 Q. Anything else other than that group?

22 A. This past year I did some work for
23 Marvin Masters. And I'm trying to think of any
24 other -- again, with the nurses primarily.

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- 1 Q. Who is Marvin Masters?
- 2 A. He is with the -- he has a law firm here
- 3 in Charleston. He's a trial attorney.
- 4 Q. Is he generally known as a trial
- 5 attorney who takes cases on the plaintiff's
- 6 side?
- 7 A. Yes.
- 8 Q. And what is his general area,
- 9 substantive area in which he takes cases, to the
- 10 extent you know?
- 11 A. I don't. I assume it's some sort of
- 12 liability issues.
- 13 Q. Is there a West Virginia Trial Lawyers
- 14 Association?
- 15 A. Yes.
- 16 Q. Is he involved with that association?
- 17 A. Yes. He's the president of it.
- 18 Q. And were you working with him in his
- 19 role as the president of the West Virginia Trial
- 20 Lawyers Association?
- 21 A. Yes. In a very limited capacity.
- 22 Q. And the West Virginia Trial Lawyers
- 23 Association is essentially an association of
- 24 plaintiffs' lawyers in West Virginia?

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 A. Yes.
- 2 Q. And can you tell me exactly what you
- 3 were doing with Mr. Masters?
- 4 A. It seemed to me that I helped round up
- 5 some state senators for a news conference. They
- 6 were pushing a bill, and I don't remember what
- 7 the bill was, but I helped round up some state
- 8 senators for that. And I also got sponsors for
- 9 two bills on out-sourcing issues. Companies
- 10 working in the United States were out-sourcing
- 11 jobs to other places.
- 12 Q. And did any of the work you had to do
- 13 there deal at all with tort reform issues?
- 14 A. Yes.
- 15 Q. Can you tell us about that?
- 16 A. That was the news conference that was
- 17 set up.
- 18 Q. Can you explain that in a little more
- 19 detail what the subject matter was?
- 20 A. My job with Marvin came down to -- my
- 21 boss was Cheri Heflin, who owned a public
- 22 relations company, and in instances where Cheri
- 23 needed help on issues that were beyond what the
- 24 nursing issues were, she called me to help her.

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- 1 And what I did was -- in the tort reform issue,
- 2 they were going to have a news conference, and I
- 3 rounded up some of the senators to help with
- 4 that news conference. So I was contracting off
- 5 of a contract.
- 6 Q. Did you know the position your client
- 7 was taking with regard to tort reform?
- 8 A. Sure. They did not want the reform.
- 9 Q. Do you know the details of the proposed
- 10 reform?
- 11 A. I suppose I did at the time, but I don't
- 12 recall what it was.
- 13 Q. Can you give a general outline of what
- 14 it was about?
- 15 A. I think it was the joint and several.
- 16 Q. Joint and several liability issue?
- 17 A. Yes. I believe that's what it was.
- 18 Q. And trying to change the West Virginia
- 19 law in that regard?
- 20 A. I think the other guys were trying to
- 21 change it and they were trying -- and Marvin and
- 22 those guys were trying to keep it the same.
- 23 Q. And the guys who were trying to change
- 24 it, who were the principal advocates before the

ANDREW GALLAGHER -- EXAM BY MR. FENNELL

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- 1 West Virginia Legislature trying to change the
- 2 joint and several liability issue?
- 3 A. I think that was the Chamber of
- 4 Commerce, I believe. Or maybe it was the
- 5 Manufacturer's Association. Something along
- 6 those lines.
- 7 Q. Let me go back to the press release
- 8 issue and just ask you, when you have a
- 9 circumstance that a company is going to be
- 10 actively involved in the consent order in doing
- 11 the actual investigation, it's almost a joint
- 12 venture with the West Virginia DEP, and then you
- 13 have the unique factor of the West Virginia DEP
- 14 engaging under a consent order and setting a
- 15 regulatory standard on a human health protection
- 16 screening level that didn't apply across the
- 17 board to the state but really just to one plant,
- 18 in Washington Works, West Virginia, is it fair
- 19 to say that in those circumstances it's helpful
- 20 as part of that joint venture to have that
- 21 corporate entity, DuPont, take a look at some of
- 22 the details that are in press releases before
- 23 they go out to insure the accuracy of the press
- 24 release?

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1 A. That certainly would be a judgment call,
2 and it's not something that I would think that
3 they should do.

4 Q. But as a judgment call, if someone else,
5 be it Secretary Callaghan, made that judgment
6 call differently than you, you wouldn't question
7 it, would you?

8 A. No. Absolutely not. I worked for him.

9 Q. And there would be nothing about that
10 that you would consider unethical; is that fair?

11 A. I might consider it unethical, but I
12 would have still done it.

13 Q. And did you consider the kinds of
14 changes in Gallagher Exhibit No. 5 the type that
15 would raise an ethical issue?

16 A. No.

17 MR. FENNELL: Why don't we take
18 just a couple minute break to make sure
19 I've got everything.

20 (Break.)

21 MR. FENNELL: No further
22 questions. Thank you very much.
23
24

ANDREW GALLAGHER -- EXAM BY MR. HILL
EXAMINATION

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1 BY MR. HILL:

2 Q. Mr. Gallagher, were you aware that at
3 some point in time Armando Benincasa was taken
4 off of the C8 issue as a lawyer from the DEP?

5 A. Yes.

6 Q. Did you know until today that his wife
7 was an employee of this law firm?

8 A. No.

9 Q. Would you agree that it was appropriate
10 for him to have been removed to avoid an
11 appearance of impropriety?

12 MR. FENNELL: Objection.

13 A. I have no clue about that. I know that
14 Dee Ann -- Dr. Staats had great confidence in
15 Mr. Benincasa.

16 Q. The press release that has now been
17 marked as Exhibit 6, you may have said this
18 before, but was that reviewed and approved by
19 Dr. Dee Ann Staats before you submitted it for
20 review to Ann Bradley?

21 A. That I don't recall.

22 Q. Am I correct that there is nothing in
23 that press release about air emissions?
24

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1 A. Correct.

2 Q. Would it have been consistent with the
3 practice that was developed for Dr. Dee Ann
4 Staats to have reviewed that press release and
5 approve it before you sent it to Ann Bradley for
6 review?

7 A. Yes.

8 MR. FENNELL: Objection.

9 A. Yes.

10 Q. Am I correct that your press releases,
11 at least this first one that we talked about
12 today that was the press release that was
13 withdrawn and changed and then pre-released,
14 that that was reviewed by Dawn Jackson at
15 DuPont?

16 MR. FENNELL: Objection.

17 A. That I don't know.

18 Q. Looking at Exhibit No. 1, top of the
19 page, does it appear from that that Dawn Jackson
20 reviewed that press release?

21 MR. FENNELL: Objection.

22 A. I could envision a scenario where she
23 would have seen it after I sent it to the
24 media. She wouldn't have had prior review. I

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don't believe that she had prior review on that.

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1 Q. Well --

2 A. Dawn Jackson.

3 Q. The press release that was ultimately
4 withdrawn, isn't that what Dawn Jackson is
5 commenting on --

6 A. Yes.

7 Q. -- on the top of Exhibit 1?

8 A. Right.

9 Q. What is your understanding as to the
10 role that Dawn Jackson plays at DuPont?

11 A. She is the public information person
12 there. I assume what Ann did here was shared
13 with Dawn whenever she saw it.

14 Q. Are you aware of her having any science
15 background or any expertise regarding C8, Dawn
16 Jackson?

17 A. No. I believe Ms. Jackson's background
18 is education.

19 MR. HILL: I think that's all
20 the questions I have.

21 MR. FENNELL: No further
22 questions. Thank you very much.

23 THE WITNESS: Thank you ladies
24

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and gentlemen.

MR. HILL: Before you leave, Mr. Gallagher, let me ask you on the record, you have a right to read this transcript, proofread it, change any errors, and sign off on it, or you can waive that. It's up to you whether you want to look at that.

THE WITNESS: Only if you hold a gun to my head will I read it.

MR. HILL: I take it from that that you want to waive?

THE WITNESS: I wish to waive it, yes.

MR. HILL: Thank you very much.

(The deposition of ANDREW GALLAGHER concluded at 12:38 p.m.)

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STATE OF WEST VIRGINIA, To-wit:

I, Jackie Gilmer, a Notary Public and Registered Professional Reporter within and for the State aforesaid, duly commissioned and qualified, do hereby certify that the deposition of ANDREW GALLAGHER was duly taken by me and before me at the time and place specified in the caption hereof.

I do further certify that said proceedings were correctly taken by me in stenotype notes, that the same were accurately transcribed out in full and true record of the testimony given by said witness.

I further certify that I am neither attorney or counsel for, nor related to or employed by, any of the parties to the action in which these proceedings were had, and further I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

My commission expires the 26th day of August 2012.

Given under my hand and seal this 2nd day of June 2004.

Jackie Gilmer
RPR, Notary Public

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